

1 go to bed one night when it is not raining and you wake up  
2 in the morning, you look out your window, you do not see  
3 rain but you see the street and sidewalk are wet and that  
4 people are wearing raincoats and carrying umbrellas.

5 Under those circumstances, it may be reasonable to  
6 infer, that is, conclude, that it rained during the night;  
7 in other words, the fact it rained during the night is an  
8 inference that might be drawn from the proven facts of the  
9 presence of water on the street and sidewalk and people in  
10 raincoats and carrying umbrellas.

11 An inference must only be drawn from a proven fact  
12 or facts, and then only if the inference flows naturally,  
13 reasonably and logically from the proven fact or facts. Not  
14 if it is speculative.

15 Therefore, in deciding whether to draw an  
16 inference, you must look at and consider all the facts in  
17 the light of reason, common sense and experience.

18 We now turn to the fundamental principles of our  
19 law that apply in all criminal trials: The presumption of  
20 innocence, the burden of proof and the requirement of proof  
21 beyond a reasonable doubt.

22 Throughout these proceedings, the defendant is  
23 presumed to be innocent. As a result, you must find the  
24 defendant not guilty unless, on the evidence presented at  
25 this trial, you conclude that the People have proven the

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## Jury Charge

1 defendant guilty beyond a reasonable doubt.

2 In determining whether the People have satisfied  
3 their burden of proving the defendant's guilt beyond a  
4 reasonable doubt, you may consider all of the evidence  
5 presented, whether by the People or by the defendant. In  
6 doing so, however, remember that even though the defendant  
7 introduced evidence, the burden of proof remains on the  
8 People.

9 The defendant is not required to prove that he is  
10 not guilty. The defendant is not required to prove or  
11 disprove anything. To the contrary. The People have the  
12 burden of proving the defendant guilty beyond a reasonable  
13 doubt. That means, before you can find the defendant guilty  
14 of a crime, the People must prove beyond a reasonable doubt  
15 every element of the crime, including that the defendant is  
16 the person who committed that crime.

17 The burden of proof never shifts from the People  
18 to the defendant. If the People fail to satisfy their  
19 burden of proof, you must find the defendant not guilty. If  
20 the People satisfy their burden of proof, you must find the  
21 defendant guilty.

22 The law uses the term "proof beyond a reasonable  
23 doubt" to tell you how convincing the evidence of guilt must  
24 be to permit a verdict of guilty. The law recognizes that  
25 in dealing with human affairs, there are very few things in

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1 this world that we know with absolute certainty. Therefore,  
2 the law does not require the People to prove the defendant  
3 guilty beyond all possible doubt.

4 On the other hand, it is not sufficient to prove  
5 that the defendant is probably guilty. In a criminal case,  
6 the proof of guilt must be stronger than that, it must be  
7 beyond a reasonable doubt.

8 A reasonable doubt is an honest doubt of the  
9 defendant's guilt for which a reason exists based upon the  
10 nature and the quality of the evidence. It is an actual  
11 doubt, not an imaginary doubt. It is a doubt that a  
12 reasonable person, acting in a matter of this importance,  
13 would be likely to entertain because of the evidence that  
14 was presented or because of the lack of convincing evidence.

15 Proof of guilt beyond a reasonable doubt is proof  
16 that leaves you so firmly convinced of the defendant's guilt  
17 that you have no reasonable doubt of the existence of any  
18 element of the crime or of the defendant's identity as the  
19 person who committed that crime.

20 In determining whether or not the People have  
21 proven the defendant's guilt beyond a reasonable doubt, you  
22 should be guided solely by a full and fair evaluation of the  
23 evidence. After carefully evaluating the evidence, each of  
24 you must decide whether or not that evidence convinces you  
25 beyond a reasonable doubt of the defendant's guilt.

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1           Whatever your verdict may be, it must not rest  
2           upon baseless speculation, nor may it be influenced in any  
3           way by bias, prejudice, sympathy or by a desire to bring an  
4           end to your deliberations or to avoid an unpleasant duty.

5           If you are not convinced beyond a reasonable doubt  
6           that the defendant is guilty of a charged crime, you must  
7           find the defendant not guilty of that crime. And if you are  
8           convinced beyond a reasonable doubt that the defendant is  
9           guilty of a charged crime, you must find the defendant  
10          guilty of that crime.

11          As judges of the facts, you alone determine the  
12          truthfulness and accuracy of the testimony of each witness.  
13          You must decide whether a witness told the truth and was  
14          accurate, or instead, testified falsely or was mistaken.

15          You must also decide what importance to give to  
16          the testimony you accept as truthful and accurate.

17          It is the quality of the testimony that is  
18          controlling, not the number of witnesses who testify.

19          If you find that any witness has intentionally  
20          testified falsely as to any material fact, you may disregard  
21          that witness' entire testimony, or, you may disregard so  
22          much of it as you find was untruthful and accept so much of  
23          it that has been truthfully and accurately given.

24          There is no particular formula for evaluating the  
25          truthfulness and accuracy of another person's statements or

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1 testimony. You bring to this process all of your varied  
2 experiences. In life, you frequently decide the  
3 truthfulness and accuracy of statements made to you by other  
4 people. The same factors used to make those decisions  
5 should be used in this case when evaluating the testimony.

6 Some of the factors that you may wish to consider  
7 in evaluating the testimony of a witness are as follows:

8 Did the witness have an opportunity to see or hear  
9 the events about which he or he testified?

10 Did the witness have the ability to recall those  
11 events accurately?

12 Was the testimony of the witness plausible and  
13 likely to be true, or, was it implausible and not likely to  
14 be true?

15 Was the testimony of the witness consistent or  
16 inconsistent with other testimony or evidence in the case?

17 Did the manner in which the witness testified  
18 reflect upon the truthfulness of that witness' testimony?

19 To what extent, if any, did the witness'  
20 background, training, education or experience affect the  
21 believability of that witness' testimony?

22 Did the witness have a bias, hostility or some  
23 other attitude that affected the truthfulness of the  
24 witness' testimony?

25 You may consider whether a witness had or did not

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1 have a motive to lie.

2 If a witness had a motive to lie, you may consider  
3 whether and to what extent, if any, the motive affected the  
4 truthfulness of that witness' testimony.

5 If a witness did not have a motive to lie, you may  
6 consider that as well in evaluating the witness'  
7 truthfulness.

8 You may consider whether a witness has any  
9 interest in the outcome of the case, or instead, whether the  
10 witness has no such interest.

11 You are not required to reject the testimony of an  
12 interested witness or to accept the testimony of a witness  
13 who has no interest in the outcome of the case. You may,  
14 however, consider whether an interest in the outcome of the  
15 case or the lack of such interest affected the truthfulness  
16 of the witness' testimony.

17 You may consider whether a witness made statements  
18 at this trial that are inconsistent with each other.

19 You may also consider whether a witness made  
20 previous statements that are inconsistent with his or her  
21 testimony at trial.

22 You may consider whether a witness testified to a  
23 fact here at trial that the witness omitted to state at a  
24 prior time when it would have been reasonable and logical  
25 for the witness to have stated the fact.

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## Jury Charge

1 In determining whether it would have been  
2 reasonable and logical for the witness to have stated the  
3 omitted fact, you may consider whether the witness'  
4 attention was called to the matter and whether the witness  
5 was specifically asked about it.

6 If a witness has made such inconsistent statements  
7 or omissions, you may consider whether and to what extent  
8 they affect the truthfulness or accuracy of the witness'  
9 testimony here at this trial.

10 The contents of a prior inconsistent statement are  
11 not proof of what happened. You may use evidence of a prior  
12 inconsistent statement only to evaluate the truthfulness or  
13 accuracy of the witness' testimony here at trial.

14 You may consider whether a witness' testimony is  
15 consistent with the testimony of other witnesses or with  
16 other evidence in the case.

17 If there are inconsistencies by or among  
18 witnesses, you may consider whether they were significant  
19 inconsistencies related to important facts, or instead, were  
20 the kind of minor inconsistencies that one might expect from  
21 multiple witnesses to the same event.

22 In this case you have heard the testimony of  
23 police officers. The testimony of a witness should not be  
24 believed solely and simply because the witness is a police  
25 officer. At the same time, a witness' testimony should not

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1 be disbelieved solely and simply because the witness is a  
2 police officer.

3 In other words, you must not believe or disbelieve  
4 a police officer just because he or she is a police officer.  
5 You must evaluate a police officer's testimony in the same  
6 way you would evaluate the testimony of any other witness.

7 You have heard testimony about the prosecutor or a  
8 lawyer or an investigator speaking to a witness about the  
9 case before the witness testified at this trial. The law  
10 does not prohibit a prosecutor or a lawyer or an  
11 investigator from speaking to a witness about the case  
12 before the witness testifies, nor does it prohibit the  
13 prosecutor or a lawyer or an investigator from reviewing  
14 with the witness the questions that will be asked at trial.

15 You have also heard testimony that a witness read  
16 certain materials pertaining to this case before the witness  
17 testified at trial. The law does not prohibit a witness  
18 from doing so.

19 You may recall that Jeannie Tamariz and Joseph  
20 Sierra testified about certain scientific, medical and  
21 technical matters and gave opinions on such matters.

22 Ordinarily, a witness is limited to testifying  
23 about facts and is not permitted to give an opinion. Where,  
24 however, scientific, medical, technical or other specialized  
25 knowledge will help a jury understand the evidence or

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1 determine a fact in issue, a witness with expertise in a  
2 specialized field may render opinions about such matters.

3 You should evaluate the testimony of any such  
4 witness just as you would the testimony of any other  
5 witness. You may accept or reject the testimony in whole or  
6 in part just as you may with respect to the testimony of any  
7 other witness.

8 In deciding whether or not to accept such  
9 testimony, you should consider the following: The  
10 qualifications and believability of the witness; the facts  
11 and other circumstances upon which the witness' opinion is  
12 based; the accuracy or inaccuracy of any assumed or  
13 hypothetical facts that the witness' opinion was based; the  
14 reason given for the witness' opinion and whether the  
15 witness' opinion is consistent or inconsistent with other  
16 evidence in the case.

17 Brian.

18 (Court conferring with court clerk.)

19 THE COURT: The People have the burden of proving  
20 beyond a reasonable doubt not only that a charged crime was  
21 committed but that the defendant is the person who committed  
22 that crime. Thus, even if you are convinced beyond a  
23 reasonable doubt that a charged crime was committed by  
24 someone, you cannot convict the defendant of that crime  
25 unless you're also convinced beyond a reasonable doubt that

## Jury Charge

1 he is the person who committed that crime.

2 I will now instruct you on the law applicable to  
3 the charged offenses. Those offenses are: Criminal sexual  
4 act in the first degree, two counts, an attempt to commit  
5 the crime of rape in the first degree, sexual abuse in the  
6 first degree, two counts, and criminal sexual act in the  
7 third degree, two counts.

8 The first count is criminal sexual act in the  
9 first degree. Under our law, a person is guilty of criminal  
10 sexual act in the first degree when he engages in oral  
11 sexual conduct with another person by forcible compulsion.

12 Under our law, it is also an element of this  
13 offense that the sexual act was committed without consent.

14 . Oral sexual conduct takes place without a person's  
15 consent when the lack of consent results from forcible  
16 compulsion.

17 Some of the terms used in this definition have  
18 their own special meaning in our law. I will now give you  
19 the meaning of the following terms: Oral sexual conduct and  
20 forcible compulsion.

21 Oral sexual conduct, under this count, means  
22 conduct between persons consisting of contact between the  
23 mouth and the vulva or vagina.

24 Forcible compulsion means to intentionally compel,  
25 either by the use of physical force or by a threat,

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1 expressed or implied, which places a person in fear of  
2 immediate death or physical injury to herself or another  
3 person.

4 In order for you to find the defendant guilty of  
5 this crime under count one, the People are required to  
6 prove, from all the evidence in the case, beyond a  
7 reasonable doubt, both of the following two elements:

8 First: That on or about July 16th, 2014, in the  
9 County of New York, the defendant, Lonnie Harrell, engaged  
10 in oral sexual conduct with Cypress Smith, specifically,  
11 contact between the defendant's mouth and the vulva or  
12 vagina of Cypress Smith;

13 And, two: That the defendant did so without  
14 Cypress Smith's consent by the use of forcible compulsion.

15 Therefore, if you find that the People have proven  
16 beyond a reasonable doubt both of those elements, you must  
17 find the defendant guilty of the crime of criminal sexual  
18 act in the first degree as charged in the first count.

19 On the other hand, if you find that the People  
20 have not proven beyond a reasonable doubt either one or both  
21 of those elements, you must find the defendant not guilty of  
22 the crime of criminal sexual act in the first degree as  
23 charged in the first count.

24 The second count is also criminal sexual act in  
25 the first degree. Under our law, a person is guilty of

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1 criminal sexual act in the first degree, under this theory,  
2 when he engages in oral sexual conduct with another person  
3 by forcible compulsion.

4 Under our law, it is also an element of this  
5 offense that the sexual act was committed without consent.

6 Oral sexual conduct takes place without a person's  
7 consent when the lack of consent results from forcible  
8 compulsion.

9 Some of the terms used in this definition have  
10 their own special meaning in our law. I will now give you  
11 the meaning of the following terms: Oral sexual conduct and  
12 forcible compulsion.

13 Oral sexual conduct, under this count, means  
14 conduct between persons consisting of contact between the  
15 mouth and the penis.

16 Forcible compulsion means to intentionally compel,  
17 either by the use of physical force or by a threat,  
18 expressed or implied, which places a person in fear of  
19 immediate death or physical injury to herself or another  
20 person.

21 In order for you to find the defendant guilty of  
22 this crime, under count two, the People are required to  
23 prove, from all the evidence in the case, beyond a  
24 reasonable doubt, both of the following two elements:

25 First: That on or about July 16th, 2014, in the

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1 County of New York, the defendant, Lonnie Harrell, engaged  
2 in oral sexual conduct with Cypress Smith, specifically,  
3 contact between the defendant's penis and the mouth of  
4 Cypress Smith;

5 And, two: That the defendant did so without  
6 Cypress Smith's consent by the use of forcible compulsion.

7 Therefore, if you find that the People have proven  
8 beyond a reasonable doubt both of those elements, you must  
9 find the defendant guilty of the crime of criminal sexual  
10 act in the first degree as charged in the second count.

11 On the other hand, if you find that the People  
12 have not proven beyond a reasonable doubt either one or both  
13 of those elements, you must find the defendant not guilty of  
14 the crime of criminal sexual act in the first degree as  
15 charged in the second count.

16 (Court conferring with Court Clerk.)

17 THE COURT: The third count is an attempt to  
18 commit the crime of rape in the first degree. I will  
19 instruct you first on the definition of the crime of rape in  
20 the first degree, then I will define for you an attempt to  
21 commit a crime, and, finally, I will put both definitions  
22 together and list for you the elements of an attempt to  
23 commit the crime of rape in the first degree.

24 Under our law, a person is guilty of rape in the  
25 first degree when he engages in sexual intercourse with

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1 another person by forcible compulsion.

2 Under our law, it is also an element of this  
3 offense that the sex act was committed without consent.

4 Sexual intercourse takes place without a person's  
5 consent when the lack of consent results from forcible  
6 compulsion.

7 Some of the terms used in this definition have  
8 their own special meaning in our law. I will now give you  
9 the meaning of the following terms: Sexual intercourse and  
10 forcible compulsion.

11 Sexual intercourse means any penetration, however  
12 slight, of the penis into the vaginal opening; in other  
13 words, any penetration of the penis into the vaginal  
14 opening, regardless of the distance of the penetration,  
15 constitutes an act of sexual intercourse. Sexual  
16 intercourse does not necessarily require erection of the  
17 penis, emission or orgasm.

18 Forcible compulsion means to intentionally compel,  
19 either by the use of physical force or by a threat,  
20 expressed or implied, which places a person in fear of  
21 immediate death or physical injury to herself or another  
22 person.

23 Under our law, a person is guilty of an attempt to  
24 commit a crime when, with intent to commit a crime, he  
25 engaged in conduct which tends to effect the commission of

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1 such crime.

2 Some of the terms used in this definition of  
3 attempt have their own special meaning in our law. I will  
4 now give you the meaning of the following terms: Intent and  
5 tends to effect.

6 Intent means conscious objective or purpose.

7 Thus, a person acts with intent to commit a crime  
8 when his conscious objective or purpose is to commit that  
9 crime.

10 Conduct which tends to effect the commission of a  
11 crime means conduct which comes dangerously close -- excuse  
12 me -- dangerously close or very near to the completion of  
13 the intended crime.

14 If a person intends to commit a crime and engaged  
15 in conduct which carries his purpose forward within  
16 dangerous proximity to the completion of the intended crime,  
17 he is guilty of an attempt to commit this crime.

18 It does not matter that the intended crime was not  
19 actually completed. The person's conduct must be directed  
20 toward the accomplishment of the intended crime. It must go  
21 beyond planning and mere preparation but it need not be the  
22 last act necessary to effect the actual commission of the  
23 intended crime. Rather, the conduct involved must go far  
24 enough that it comes dangerously close or very near to the  
25 completion of the intended crime.

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## Jury Charge

1 In order for you to find the defendant guilty of  
2 an attempt to commit the crime of rape in the first degree,  
3 the People are required to prove, from all the evidence in  
4 the case, beyond a reasonable doubt, each of the following  
5 three elements:

6 First: That on or about July 16th, 2014, in the  
7 County of New York, the defendant, Lonnie Harrell, intended  
8 to commit the crime of rape in the first degree;

9 Two: That the defendant engaged in conduct which  
10 tended to effect the commission of that crime;

11 And, three: That the defendant did so without  
12 Cypress Smith's consent by the use of forcible compulsion.

13 Therefore, if you find that the People have proven  
14 beyond a reasonable doubt all three of those elements, you  
15 must find the defendant guilty of the crime of an attempt to  
16 commit the crime of the rape in the first degree under the  
17 third count.

18 On the other hand, if you find that the People  
19 have not proven beyond a reasonable doubt any one or more of  
20 the three elements, you must find the defendant not guilty  
21 of the crime of an attempt to commit the crime of rape in  
22 the first degree under the third count.

23 The fourth count is sexual abuse in the first  
24 degree. Under our law, a person is guilty of sexual abuse  
25 in the first degree when he subjects another person to

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1 sexual contact by forcible compulsion.

2 Under our law, it is also an element of this  
3 offense that the sexual act was committed without consent.

4 Sexual contact takes place without a person's  
5 consent when the lack of consent results from forcible  
6 compulsion.

7 Some of the terms used in this definition have  
8 their own special meaning in our law. I will now give you  
9 the meaning of the terms sexual contact and forcible  
10 compulsion.

11 Sexual contact means any touching of the sexual or  
12 other intimate parts of a person for the purpose of  
13 gratifying the sexual desire of either party. It includes  
14 the touching of the actor by the victim as well as the  
15 touching of the victim by the actor, whether directly or  
16 through clothing, as well as the emission of ejaculate by  
17 the actor upon any part of the victim, clothed or unclothed.

18 Forcible compulsion means to intentionally compel,  
19 either by the use of physical force or by a threat,  
20 expressed or implied, which places a person in fear of  
21 immediate death or physical injury to herself or another  
22 person.

23 In order for you to find the defendant guilty of  
24 this crime under count four, the People are required to  
25 prove, from all the evidence in the case, beyond a

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## Jury Charge

1 reasonable doubt, both of the following two elements:

2 First: That on or about July 16th, 2014, in the  
3 County of New York, the defendant, Lonnie Harrell, subjected  
4 Cypress Smith to sexual contact, specifically, contact  
5 between the defendant's finger and the vagina of Cypress  
6 Smith;

7 And, two: That the defendant did so without  
8 Cypress Smith's consent by the use of forcible compulsion.

9 Therefore, if you find that the People have proven  
10 beyond a reasonable doubt both of those elements, you must  
11 find the defendant guilty of the crime of sexual abuse in  
12 the first degree as charged in the fourth count.

13 On the other hand, if you find that the People  
14 have not proven beyond a reasonable doubt either one or both  
15 of those elements, you must find the defendant not guilty of  
16 the crime of sexual abuse in the first degree as charged in  
17 the fourth count.

18 The fifth count is also sexual abuse in the first  
19 degree. Under our law, a person is guilty of sexual abuse  
20 in the first degree when he subjects another person to  
21 sexual contact by forcible compulsion.

22 Again, under our law, it is an element of this  
23 offense that the sexual act was committed without consent.

24 Sexual contact takes place without a person's  
25 consent when the lack of consent results from forcible

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1       compulsion.

2               Some of the terms used in this definition have  
3       their own special meaning in our law. I have previously  
4       defined for you the terms sexual contact and forcible  
5       compulsion.

6               In order for you to find the defendant guilty of  
7       this crime under count five, the People are required to  
8       prove, from all the evidence in the case, beyond a  
9       reasonable doubt, both of the following two elements:

10              First: That on or about July 16th, 2014, in the  
11       County of New York, the defendant, Lonnie Harrell, subjected  
12       Cypress Smith to sexual conduct, specifically, contact  
13       between the defendant's mouth and the mouth of Cypress  
14       Smith;

15              And, two: That the defendant did so without  
16       Cypress Smith's consent by use of forcible compulsion.

17              Therefore, if you find that the People have proven  
18       beyond a reasonable doubt both of those elements, you must  
19       find the defendant guilty of the crime of sexual abuse in  
20       the first degree as charged in the fifth count.

21              On the other hand, if you find that the People  
22       have not proved beyond a reasonable doubt either one or both  
23       of those elements, you must find the defendant not guilty of  
24       the crime of sexual abuse in the first degree as charged in  
25       the fifth count.

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1           The sixth count is criminal sexual act in the  
2           third degree. Under our law, a person is guilty of criminal  
3           sexual act in the third degree when, being twenty-one years  
4           old or more, he engaged in oral sexual conduct with a person  
5           who is incapable of consent by reason of being less than  
6           seventeen years of age.

7           I previously defined for you the meaning of the  
8           term oral sexual conduct. I will now define for you the  
9           meaning of the term incapable of consent.

10          Under our law, a person is incapable of consenting  
11          to oral sexual conduct when that person is less than  
12          seventeen years of age.

13          Thus, the law deems oral sexual conduct with such  
14          person without -- to be without that person's consent even  
15          if in fact that person did consent.

16          It is not a defense to a charge of criminal sexual  
17          act in the third degree that the actor did not know that the  
18          person with whom the actor had sexual conduct was less than  
19          seventeen years of age or that the actor believed that such  
20          person was seventeen years of age or more on the day of the  
21          crime.

22          In order for you to find the defendant guilty of  
23          this crime, the People are required to prove, from all of  
24          the evidence in the case, beyond a reasonable doubt, each of  
25          the following three elements:

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1 First: That on or about July 16th, 2014, in the  
2 County of New York, the defendant, Lonnie Harrell, engaged  
3 in oral sexual conduct with Cypress Smith, specifically,  
4 contact between the defendant's mouth and the vulva of  
5 Cypress Smith;

6 Two: That the defendant was twenty-one years of  
7 age or older at the time;

8 Three: That Cypress Smith was incapable of  
9 consent because she was less than seventeen years of age.

10 Therefore, if you find that the People have proven  
11 beyond a reasonable doubt all three of those elements, you  
12 must find the defendant guilty of the crime of criminal  
13 sexual act in the third degree as charged in the sixth  
14 count.

15 On the other hand, if you find that the People  
16 have not proven beyond a reasonable doubt any one or more of  
17 those elements, you must find the defendant not guilty of  
18 the crime of criminal sexual act in the third degree as  
19 charged in the sixth count.

20 The seventh and final count is also criminal  
21 sexual act in the third degree. Under our law, a person is  
22 guilty of criminal sexual act in the third degree when,  
23 being twenty-one years of age or older, he engages in oral  
24 sexual conduct with a person who is incapable of consent by  
25 reason of being less than seventeen years of age.

1 I previously defined for you the meaning of the  
2 terms oral sexual conduct and incapable of consent.

3 In order for you to find the defendant guilty of  
4 this crime, under count seven, the People are required to  
5 prove, from all the evidence in the case, beyond a  
6 reasonable doubt, each of the following three elements:

7 First: That on or about July 16th, 2014, in the  
8 County of New York, the defendant, Lonnie Harrell, engaged  
9 in oral sexual conduct with Cypress Smith, specifically,  
10 contact between the defendant's penis and the mouth of  
11 Cypress Smith;

12 Two: That the defendant was twenty-one years of  
13 age or older at the time;

14 And, three: That Cypress Smith was incapable of  
15 consent because she was less than seventeen years of age at  
16 the time.

17 Therefore, if you find that the People have proven  
18 beyond a reasonable doubt all three of those elements, you  
19 must find the defendant guilty of the crime of criminal  
20 sexual act in the third degree as charged in the seventh  
21 count.

22 On the other hand, if you find that the People  
23 have not proven beyond a reasonable doubt any one or more of  
24 those elements, you must find the defendant not guilty of  
25 the crime of criminal sexual act in the third degree as

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## Jury Charge

1 charged in the seventh count.

2 We have now reached that part of my charge dealing  
3 with the process of deliberations. Your verdict, on each  
4 count you consider, whether guilty or not guilty, must be  
5 unanimous.

6 No one expects that all jurors will have the same  
7 view of the case when they first enter the jury room. To  
8 reach a unanimous verdict, you must deliberate with the  
9 other jurors. That means, you should discuss the evidence  
10 and consult with each other. Listen to each other. Give  
11 each other's views careful consideration and reason together  
12 when considering the evidence.

13 And when you deliberate, you should do so with a  
14 view towards reaching an agreement, if that can be done  
15 without surrendering individual judgment.

16 Each of you must decide the case for yourself but  
17 only after a fair and impartial consideration of the  
18 evidence with the other jurors.

19 You should not surrender your honest view of the  
20 evidence simply because you want the trial to end or because  
21 you're outvoted. At the same time, you should not hesitate  
22 to re-examine your views and change your minds if you become  
23 convinced that your position was not correct.

24 In other words, when you enter the jury room, you  
25 may have individually reached certain tentative opinions and

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1 conclusions. Before finalizing those opinions and  
2 conclusions, you should deliberate with the other jurors.

3 You must be open to reason and be willing to  
4 adhere to your opinion or conclusions if persuaded that you  
5 are correct, or to change your opinion or conclusions if  
6 persuaded that you are not correct.

7 In the interests of justice, please make every  
8 effort consistent with your conscious and evidence in the  
9 case. Harmonize your views and decisions with those of your  
10 fellow jurors and make every effort to come to a unanimous  
11 agreement based on the law and the facts of the case.

12 To the best of your ability, I ask you to apply  
13 common sense and good judgment. Do not let fear, favor,  
14 sympathy, bias, prejudice or consideration of a possible  
15 sentence or punishment sway your minds in any way in  
16 analyzing the testimony. Decide this case as you have  
17 promised, fairly on the evidence and on the law, whether you  
18 agree with the law or not.

19 Some jurors took notes. Any notes taken are only  
20 an aid to your memory and must not take precedence over your  
21 independent recollection. Those jurors who chose not to  
22 take notes must rely on their own independent recollection  
23 and must not be influenced by any notes that another juror  
24 may have taken.

25 Any notes you took are only for your own personal

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1 use in refreshing your recollection. A juror's notes are  
2 not a substitute for the recorded transcript of the  
3 testimony or for any exhibit received in evidence.

4 If there is a discrepancy between a juror's  
5 recollection and his or her notes regarding the evidence,  
6 you should ask to have the relevant testimony read back or  
7 the exhibit produced in the jury room.

8 In addition, a juror's notes are not a substitute  
9 for the detailed instructions I have given you of the  
10 principles of law that govern this case. If there is a  
11 discrepancy between a juror's recollection and his or her  
12 notes regarding those principles, you should ask me to  
13 explain those principles again and I will do so.

14 In the course of your deliberations, if your  
15 recollection of any part of the testimony should fail, or if  
16 you find yourselves in doubt concerning my instructions to  
17 you on the law, you may request a readback. Your foreperson  
18 should write out your request, sign it and give the request  
19 to the court officer to be delivered to the Court. As soon  
20 as I can determine the appropriate response to your request,  
21 or the requested testimony can be located by the court  
22 reporter, you will be called back to the courtroom and I  
23 will respond to your request.

24 Try to tell us the portion of the testimony you  
25 need, direct or cross. Otherwise we may have to read the

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## Jury Charge

1 entire testimony. Try to be specific in your request. It  
2 does take us a little longer to find what you want, but it  
3 will save you the time and the distraction of listening to  
4 testimony that you don't need for your deliberations.

5 Of course, when testimony is read back, questions  
6 to which an objection was sustained and material otherwise  
7 struck from the record is not read back.

8 If you have a question on the law, write me a note  
9 specifying what you want me to review with you.

10 Under our law, the first juror selected,  
11 Mr. Alexander, is known as the foreperson. During  
12 deliberations, the foreperson's opinion and vote are not  
13 entitled to any more importance than that of any other  
14 juror.

15 What we ask the foreperson to do during  
16 deliberations is to sign any written note that the jury  
17 sends to the Court. The foreperson does not have to write  
18 the note or agree with its contents. The foreperson's  
19 signature only indicates that the writing comes from the  
20 jury. The foreperson may also chair the jury's discussions  
21 during deliberations.

22 When the jury has reached a verdict, guilty or not  
23 guilty, the entire jury will be asked to come into court.  
24 The foreperson will be asked whether the jury has reached a  
25 verdict. If the foreperson says yes, he will then be asked

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1 what the verdict is for each charged crime. After that, the  
2 entire jury will be asked whether if that is their verdict  
3 and will answer yes or no.

4 Finally, upon the request of a party, each juror  
5 will be asked individually whether the announced verdict is  
6 the verdict of that juror, and then, upon being asked, each  
7 juror will answer yes or no.

8 I will give you a form known as a verdict sheet.  
9 The verdict sheet lists each count submitted for your  
10 consideration and the possible verdicts. Please use the  
11 form to record your verdict with an X or checkmark in the  
12 appropriate place.

13 In addition to listing the counts, I have added  
14 additional information on the verdict sheet in order to  
15 distinguish between the various counts.

16 Finally, there are a few remaining rules which you  
17 must observe during your deliberations:

18 First: While you are here in the courthouse  
19 deliberating on the case, you will be kept together in the  
20 jury room. You may not leave the jury room without  
21 permission.

22 If you have a cell phone or other electronic  
23 device, please give it to a court officer to hold for you  
24 while you are engaged in deliberations.

25 You must deliberate only when you're all gathered

## Jury Charge

1 together in the jury room. You must not, for example,  
2 discuss the case as you go to and from the courtroom. It is  
3 important that each juror have the opportunity to hear  
4 whatever another juror has to say about the case and that,  
5 by law, must only be done when you're all gathered together  
6 in the jury room. Thus, if for any reason all twelve of you  
7 are not gathered together in the jury room, please stop your  
8 deliberations.

9 During your deliberations, you must only discuss  
10 the case amongst yourselves. You must not discuss the case  
11 with anyone else, including the court officer, or permit  
12 anyone other than a fellow juror to discuss the case in your  
13 presence.

14 If you have a question or request, you must  
15 communicate with me by writing a note which you will give to  
16 a court officer to give to me. The law requires that you  
17 communicate with me in writing, in part, to make sure there  
18 are no misunderstandings. Give the note to a court officer  
19 who, in turn, will give it to me. When the jury room door  
20 is open to give the court officer the note, please stop  
21 deliberating until the officer has left and the door is  
22 closed.

23 In any note that you send me, do not tell me what  
24 the vote of the jury is on any count.

25 I should explain that under our law, I am not

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1 permitted to have a conversation about the facts of the case  
2 or a possible verdict or the vote of the jury on any count  
3 with any one juror or group of jurors or even the entire  
4 jury. If a juror wants to speak with me during  
5 deliberations, a meeting here in the courtroom with the  
6 parties will be arranged.

7 No juror, however, can tell me what is being said  
8 about the facts of the case or a possible verdict or what  
9 the vote of any juror or the jury is on any count. While I  
10 will, of course, listen to whatever a juror has to say, if  
11 it does involve those subjects, I may not be able to respond  
12 to that juror if the response involves instructions on the  
13 law. I may be required to call into court the entire jury  
14 and respond by speaking to the entire jury.

15 The reason for that is that our law wants to make  
16 sure each and every juror hears at exactly the same time  
17 whatever I have to say about the law, and our law wants to  
18 make sure that the jury hears those instructions from me and  
19 not from another juror.

20 That concludes my instructions on the law.

21 Can counsel please approach?

22 (Whereupon, the following proceedings took place  
23 on the record and outside the presence of the jury:)

24 THE COURT: Are there any exceptions to the  
25 charge?

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1 MR. HERLICH: Yes, Judge, a couple of things.

2 Do you have the verdict sheet, just may I see it  
3 real quickly?

4 THE COURT: Brian, verdict sheet.

5 THE CLERK: (Hanging.)

6 THE COURT: For the record, the verdict sheet was  
7 shown to both of you in advance and you both initialed it,  
8 right?

9 MS. PARK: I did.

10 THE CLERK: (Hanging.)

11 MR. HERLICH: Yeah, the spreadsheet, I agree with  
12 it.

13 I have two things. One is, I thought that the  
14 expert was Dean Delitta and not Joseph Sierra.

15 MS. PARK: Yes, the expert, there was a mistake.

16 THE COURT: There was a mistake as to the experts?

17 MS. PARK: Yes. It was Jeannie Tamariz.

18 MR. HERLICH: Yes.

19 MS. PARK: And then Dean Delitta, not Joseph  
20 Sierra.

21 MR. HERLICH: Dean Delitta was the cell phone site  
22 expert.

23 THE COURT: And not Joseph Sierra.

24 MS. PARK: Correct.

25 And Dr. Singh was also an expert.

1 MR. HERLICH: Right.

2 THE COURT: Okay.

3 Anything else?

4 MR. HERLICH: The only other objection or request  
5 for a change is the charge as to count number one, your  
6 Honor, and I'm sorry that I didn't catch it earlier, it  
7 defines oral sexual conduct to mean the contact between the  
8 defendant's mouth and either the vulva or vagina of the  
9 complaining witness. And the indictment indicts only as to  
10 the vulva.

11 THE COURT: Would you like me to correct that?

12 MR. HERLICH: Please.

13 And that completely conforms to the verdict sheet  
14 which I agree with.

15 THE COURT: Okay, thank you.

16 MR. HERLICH: Thank you.

17 THE COURT: What do you want to do with the  
18 alternates?

19 MR. HERLICH: I would agree to discharge them. I  
20 don't believe I will substitute them.

21 THE COURT: Okay.

22 What do you want to do with the evidence, just  
23 send it in if requested?

24 MR. HERLICH: Sure.

25 (Whereupon, the following proceedings took place

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## Jury Charge

1 on the record and in the presence of the jury:)

2 THE COURT: We have a few corrections.

3 When I identified the expert witnesses, I referred  
4 to Jeannie Tamariz and Joseph Sierra. That was a mistake.  
5 It's Jeannie Tamariz and Dean -- sorry -- Dean Delitta and  
6 Dr. Anjay Singh. Those are the three experts.

7 One other correction. Under count one when I  
8 defined oral sexual conduct, I defined it as conduct between  
9 persons consisting of contact between the mouth and the  
10 vulva or vagina. It should not include vagina. It should  
11 be vulva. So, oral sexual conduct under this count which  
12 means persons consisting of contact between the mouth and  
13 the vulva. Some of this will make a little bit more sense  
14 once you actually see the verdict sheet and you see the  
15 additional language I have included.

16 Jurors, it's about five after four. I will allow  
17 you to deliberate to four-twenty-five or so, then I will  
18 call you back in and I will excuse you at about four-forty  
19 and ask you to come back tomorrow at nine-thirty.

20 So, at this time you can begin your deliberations.

21 Please remember that if you have a request, just  
22 send me a note, it must be signed by your foreperson. And  
23 please include the date and time on the note.

24 I will ask the four alternates jurors just please  
25 step aside for one minute to allow the twelve jurors to step

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1 out.

2 MR. HERLICH: Your Honor?

3 THE COURT: Sorry, one second.

4 MR. HERLICH: I don't know if you told them they  
5 need to write a note just for physical exhibits. You don't  
6 have to tell them that, no?

7 THE COURT: No.

8 Okay, you can step out.

9 A COURT OFFICER: This way, please.

10 (Whereupon, the jury exited the courtroom.)

11 THE COURT: I will ask the four alternates, you  
12 can have a seat in the front row, if you want.

13 Addressing the four alternate jurors, you have  
14 obviously been separated from the twelve jurors at this  
15 time, and, unfortunately, you will not have the opportunity  
16 to deliberate with them.

17 Your jury service will come to an end at this  
18 time, but I wanted to just take a minute to thank you for  
19 your jury service. Even though you actually won't get a  
20 chance to deliberate, we couldn't do these trials without  
21 alternate jurors.

22 I can tell you personally that I have had many  
23 trials that I have used every single one of my alternate  
24 jurors. If we didn't have alternate jurors available, we  
25 would have to declare a mistrial and do the whole thing over

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1 again.

2 I also recognize when you give us your time you  
3 disrupt your life. And I don't take that lightly. So at  
4 this point I just want to thank you very much for your  
5 service.

6 You will recall that during the course of the  
7 trial I gave you certain admonitions and gave these to you  
8 numerous times. Among those was you can't discuss this case  
9 amongst yourselves or with anyone else. I just want to let  
10 you know that that no longer applies. You are free to  
11 discuss the case with anyone that you would like to talk to  
12 about it, but you're also free not to. Nobody can make you  
13 do anything you don't want to.

14 At this time I do excuse you with the gratitude of  
15 the Court. Thank you.

16 You can step out.

17 A COURT OFFICER: Jurors, follow me.

18 (Whereupon, the alternate jurors exited the  
19 courtroom.)

20 THE COURT: Sergeant, if we can just, you know,  
21 put him back till four-twenty-five and I will be down at  
22 that time.

23 THE SERGEANT: Sure.

24 MS. PARK: Judge, there is something that I need  
25 to address. We do have -- we do have an agreement with most

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1 of the redaction, but I'd like to renew my application for  
2 the redacting of the threats that the victim had used here.

3 THE COURT: Okay. I had already ruled on that,  
4 right?

5 MS. PARK: Yes.

6 THE COURT: Okay.

7 MS. PARK: But -- well, since your Honor's ruling,  
8 there was testimony from the doctor -- well, first of all,  
9 it is my position that Mr. Herlich actually opened the door  
10 because he crossed Cypress about the threats and he actually  
11 read the part about the threats onto the record. That's  
12 one.

13 And, two, when Dr. Singh testified, she did  
14 testify that she considers everything that happens regarding  
15 an incident in determining treatment plans and discharge  
16 plans.

17 So, my position is any verbal threats become  
18 relevant here.

19 MR. HERLICH: Judge, I did discuss this with Ms.  
20 Park on Friday in her office, and only with regard to the  
21 narrative in the comprehensive sexual assault form, which I  
22 read to the complainant, I will consent to the one sentence  
23 that says I was threatened, but the various mentions of  
24 threat throughout the medical record, I would not consent to  
25 being unredacted and I did not cross-examine anyone about

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1 those threats. For example, the threat that said he's going  
2 to kill me and my entire family which is in part of the  
3 medical record, that, the Court has ruled on.

4 Just to be very clear, your Honor, I'd like to  
5 hand up to the Court the --

6 THE COURT: That's not necessary.

7 MR. HERLICH: Okay.

8 It's in the comprehensive sexual assault form, I  
9 read it to the jury, I read it to the complainant, and I  
10 believe I don't think -- I did not read it to Dr. Singh  
11 because she didn't take the data.

12 Originally the Court said patient was threatened  
13 by neighbor would be redacted, and during my cross of the  
14 complainant, when I wanted to point out that she was asked  
15 by the defendant to do all these things, I sua sponte, in a  
16 sense, Judge, thought it was only fair that I ask her: But  
17 you were also threatened, you also indicated that at the  
18 time that the narrative was taken, and she said yes.

19 So, but anything else that I never touched on, I  
20 would again renew my application to keep that redacted.

21 THE COURT: I agree. So, to the extent that  
22 you're in agreement that that one portion can come in, and  
23 that's fine, but if you agree, then I have no problem with  
24 it.

25 I don't believe that anything else that transpired

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1 during the course of the trial in any way serves to alter my  
2 previous ruling on that issue.

3           Alright, I will see you in a few minutes.

4           MR. HERLICH: Thank you.

5           THE CLERK: Are exhibits just going in?

6           THE COURT: They are just going in if requested.

7           (Whereupon, jury deliberations took place.)

8           THE CLERK: Continuing case on trial, People  
9 versus Lonnie Harrell.

10           THE COURT: Sergeant, whenever you want to bring  
11 them in, please.

12           Any notes, any requests?

13           A COURT OFFICER: No.

14           THE CLERK: Nothing.

15           A COURT OFFICER: Jury entering.

16           (Whereupon, the jury entered the courtroom.)

17           THE CLERK: Continuing case on trial, People  
18 versus Lonnie Harrell.

19           All parties, except for the defendant, and all  
20 parties and all jurors are present.

21           THE COURT: Good afternoon.

22           Today's proceedings are now drawing to a close and  
23 I'm about to read to you the admonitions that I read to you  
24 throughout the trial. I will just note that those  
25 admonitions take on special significance at this point

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1 because you are at a critical stage of the proceedings, you  
2 are in the middle of the deliberations.

3 So, I remind you: Please do not talk either  
4 amongst yourselves or with anyone else about anything  
5 related to the case.

6 Do not request, accept, agree to accept or discuss  
7 with any person, the receipt or acceptance of any payment or  
8 benefit in exchange for supplying any information concerning  
9 the trial.

10 You must promptly report directly to me any  
11 incident within your knowledge involving an attempt by any  
12 person to improperly influence you or any member of the  
13 jury.

14 Do not visit or view any of the locations  
15 discussed in the testimony.

16 Do not read, view or listen to any accounts or  
17 discussions of the case reported by newspapers, television,  
18 radio, the Internet or any other news media.

19 Do not attempt to research any fact, issue or law  
20 related to the case whether by discussion with others or  
21 research in a library or on the Internet or any other means  
22 or source.

23 I want to emphasize that in addition to not  
24 talking face to face with anyone about the case, you must  
25 not communicate with anyone about the case by any other

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1 means, including by telephone, text messages, e-mail,  
2 Internet chatrooms, blogs and social websites and the like.

3 You must not provide any information about the  
4 case to anyone by any means whatsoever, and that includes  
5 the posting of information about the case or what you are  
6 doing on the case on any device or Internet site, including  
7 blogs.

8 And you must not Google or otherwise search for  
9 any other information about the case or the law which  
10 applies to the case or the people involved in the case,  
11 including the defendant, the witnesses, the lawyers or  
12 myself.

13 I ask you to please be back tomorrow at  
14 nine-thirty and the court officers will show you into the  
15 jury room when it's time.

16 I do remind you that you cannot begin your  
17 deliberations until all twelve of you are present. So even  
18 if you're all there early and one of you is missing, you  
19 have to wait. You cannot begin your deliberations, okay?

20 Hope you have a good night. See you tomorrow.

21 A COURT OFFICER: Leave your books on your chairs,  
22 make sure you have all your belongings and step this way,  
23 please.

24 (Whereupon, the jury exited the courtroom.)

25 THE COURT: Okay, addressing the attorneys, you

1 don't need to be here at nine-thirty. In fact, you don't  
2 have to be here at all as long as we can reach you and you  
3 can get here, say, within ten minutes.

4 I am going to be starting a hearing tomorrow, but  
5 that shouldn't interfere with anything that we have going  
6 on.

7 MR. HERLICH: Okay.

8 THE COURT: Okay, have a good night.

9 (Whereupon, the trial was adjourned to Tuesday,  
10 October 6th, 2015.)  
11  
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Joanne Fleming

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 59  
-----x

3 THE PEOPLE OF THE STATE OF NEW YORK Indictment  
4 No. 4258/14  
5 -against- Crim. Sex Act 1  
6 LONNIE HARRELL, Jury Trial  
7 Defendant.  
8 -----x

9 October 6th, 2015  
10 100 Centre Street  
11 New York, NY 10013

12 B e f o r e:

13 HONORABLE JUAN M. MERCHAN,  
14 Justice.  
15

16 A p p e a r a n c e s:

17 CYRUS R. VANCE, JR., ESQ.  
18 District Attorney, New York County  
19 BY: JUNG PARK, ESQ.  
Assistant District Attorney

20 THEODORE HERLICH, ESQ.  
21 Attorney for Defendant  
22  
23  
24

25 Joanne Fleming  
Senior Court Reporter

10/6-15

1 (In open court)

2 THE CLERK: Continuing case on trial.

3 (Whereupon, jury deliberations took place.)

4 THE CLERK: Calling case on trial, People versus  
5 Lonnie Harrell.

6 THE COURT: Okay, good afternoon.

7 Your appearances, please.

8 MR. HERLICH: Theodore Herlich for Lonnie Harrell.

9 MS. PARK: And Jung Park for the People.

10 Good afternoon, your Honor.

11 THE COURT: Okay, good afternoon.

12 We received a note, it's been marked as Court  
13 Exhibit Number III and it was signed by the jury foreperson  
14 at twelve-fifteen.

15 I noticed that the court officer gave the note to  
16 both of the attorneys to review, is that correct, you had a  
17 chance to read this?

18 MR. HERLICH: Yes.

19 MS. PARK: Yes.

20 THE COURT: I will now read it. It says: We, the  
21 jury, request one: Witness Cypress Smith's testimony to  
22 both prosecution and defense regarding the position of  
23 defendant's penis in relation to witness' vulva slash  
24 vagina, including witness' statements that the defendant  
25 quote moved to and that she quote asked him to stop because

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1 it would hurt and he responded that quote it would not hurt  
2 if you relaxed.

3 And, two: The Judge's instructions regarding  
4 charge number three.

5 Did I read that correctly?

6 MS. PARK: Yes.

7 MR. HERLICH: Yes.

8 THE COURT: Okay.

9 How long do you think it would take you to  
10 identify the relevant sections?

11 MR. HERLICH: Not long.

12 MS. PARK: Not long.

13 MR. HERLICH: I think I already have it.

14 THE COURT: So, do you want me to give you a few  
15 minutes to do that?

16 MR. HERLICH: (Indicating.)

17 THE COURT: Okay.

18 MS. PARK: Judge?

19 THE COURT: Because in the alternative, what we  
20 can do is, I can bring them in and excuse them for lunch.  
21 It's up to you.

22 MR. HERLICH: I mean, I know the direct on this  
23 point and the cross, because it was part of my summation.

24 THE COURT: Okay.

25 MR. HERLICH: So...

1 THE COURT: Okay, that's fine.

2 MS. PARK: Judge, I just wanted to know whether we  
3 should make a record about the defendant not being here.

4 THE COURT: We are. Yes, I apologize, I meant to  
5 do that.

6 The defendant is in the holding pen right next  
7 door. Would you like to ask him if he would like to come  
8 join us?

9 MR. HERLICH: I assume it was about leg shackles.

10 THE SERGEANT: And the cuff in the front.

11 MR. HERLICH: Yes, he -- we can ask him to come.  
12 I expect that his position will not have changed since  
13 yesterday, that he won't come to court being shackled, so...  
14 but yes, we should ask him.

15 THE COURT: Sergeant, if you wouldn't mind asking  
16 him, please.

17 (Sergeant complies.)

18 THE COURT: Yes?

19 THE SERGEANT: The defendant was asked if he would  
20 like to attend his appearance, he would be in shackles as  
21 well as dealing with cuffs with the belt in front, and he  
22 stated he would like to come into the courtroom.

23 THE COURT: Okay, great. So let's bring him in.  
24 Sergeant? Can I ask you a question, sergeant?

25 THE SERGEANT: Yes, sir.

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1 (Judge conferring with Sergeant.)

2 THE SERGEANT: Sergeant Gelormino.

3 Normally what constitute leg shackles, as we're  
4 dealing with, is a D link belt. It's fastened in the front  
5 with handcuffs through a metal buckle which would stop the  
6 defendant from raising his hands up and striking.

7 THE COURT: Sure.

8 THE SERGEANT: The testimony that was going to be  
9 given would have been given with the leg shackles on in case  
10 the defendant had to make any type of motion. That way it  
11 wouldn't lead to --

12 THE COURT: Right.

13 THE SERGEANT: -- the jury seeing that he was  
14 being restrained.

15 THE COURT: Exactly.

16 THE SERGEANT: His presence at the table, I will  
17 call down to the lieutenant and find out. Normally,  
18 protocol at the table would be the shackles, which would be  
19 hidden by the bunting, as well as the D link belt and the  
20 defendant is moved up close to the table where the jury  
21 cannot see either of the two.

22 THE COURT: Okay.

23 And he's already agreed to that?

24 THE SERGEANT: He agreed to it. Said to him: It  
25 will be shackles and a D link, okay?

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1           When they go in, we'll find out for sure. I have  
2           to assume, and I hate to use that word, that the defendant  
3           does understand what the D link belt is.

4           THE COURT: Okay.

5           THE SERGEANT: I will confer with my lieutenant.

6           A COURT OFFICER: He's on his way up.

7           THE COURT: He's on his way up, okay.

8           I was just wondering because, again, I bent over  
9           backwards to stress that, when it comes to matters of  
10          security, I defer to the sergeant and the court officers.

11          However, if it can be arranged for his hands not  
12          to be in the D link belt, just so that he doesn't have to  
13          worry about hiding his hands under the table or behind the  
14          bunting when the jury comes in for the readback, I'd  
15          appreciate that. If you still have the concerns and the  
16          lieutenant still has the concerns, I understand that.

17          THE SERGEANT: Great.

18          We will have an answer momentarily.

19          THE COURT: Yes, thank you.

20          MR. HERLICH: Judge, we have found direct and --  
21          direct, cross and redirect. There is a question about  
22          whether a certain question and answer should come in as  
23          responsive to the --

24          THE COURT: Okay, what question and answer is  
25          that? What page number?

1 MR. HERLICH: Page 94 line 25 through page 95 line  
2 2.

3 THE COURT: Page 94 line 25?

4 MR. HERLICH: Yes.

5 THE COURT: Okay.

6 Through page 95.

7 MR. HERLICH: The redirect begins at line 18, your  
8 Honor.

9 THE COURT: Okay.

10 MR. HERLICH: And it's my position it should end  
11 at line 24 and the prosecutor would like line 25, that  
12 question, continuing to page 95 line 2.

13 THE COURT: Okay.

14 "Question: Did he stop? Did he stop with  
15 everything at that point?

16 "Answer: No.

17 "Question: Did he continue?

18 "Answer: Yes.

19 "Question: What was the next incident after that?

20 "Answer: He put his mouth on my vagina."

21 It seems pretty clear to me that that's responsive  
22 to the jury's question.

23 MR. HERLICH: Alright.

24 If that's your position, your Honor, then on page  
25 95, I was going to ask you read up to and including line 6.

Joanne Fleming

1 So we know what the prosecutor was following up with after  
2 the penis vagina stuff.

3 THE COURT: That's fine.

4 MS. PARK: That's fine.

5 THE COURT: Okay.

6 So, do you have all of the sections now?

7 MS. PARK: Yes, we have an agreement.

8 THE COURT: And, approximately, just how many  
9 pages are we talking about?

10 MS. PARK: Very little.

11 MR. HERLICH: It's page 64 lines eight through  
12 eighteen.

13 THE COURT: Right.

14 MR. HERLICH: Do you want --

15 THE COURT: I'm not writing it down. I want to  
16 get a sense of how many pages.

17 MR. HERLICH: Page 90 line 24 through page 91 line  
18 12. Page 94 line 18 through page 95 line 6.

19 THE COURT: Okay, that should be very brief.

20 And given the time of this readback, I'm not going  
21 to excuse them for lunch at one. I'm going to -- I'm going  
22 to excuse them for lunch at one-thirty. This way, after  
23 they hear the readback and they hear my instructions as to  
24 count three which they requested, they'll have a little time  
25 to deliberate and digest it.

Joanne Fleming

1 Any objection to that?

2 MR. HERLICH: No.

3 MS. PARK: No.

4 MR. HERLICH: Has the lunch order been taken so  
5 they know it's taken?

6 THE COURT: No lunch order has been taken. They  
7 will be excused for lunch at one-thirty.

8 MR. HERLICH: Oh, they go out. I didn't know  
9 that. Is that new, your Honor? I didn't -- I don't mean to  
10 be sarcastic.

11 THE COURT: Yeah, it's been in place for about  
12 five years now. We're not supposed to really give a lunch  
13 unless there is a reason to believe that that will expedite  
14 things.

15 MR. HERLICH: You know, I'm sorry, I didn't know  
16 that.

17 THE COURT: You don't need to be sorry. In the  
18 good old days, yes, everybody got lunch. Now it's on a case  
19 by case basis.

20 MR. HERLICH: Okay.

21 THE COURT: Apparently you've been appearing  
22 before the judges who are not following the rules.

23 MR. HERLICH: Off the record.

24 (Whereupon, a discussion was held at the bench and  
25 off the record.)

Joanne Fleming

1 THE SERGEANT: Judge, upon consulting with my  
2 lieutenant, Lieutenant McGee, protocol is he will have to  
3 stand for the restraints being the normal protocols of  
4 shackles as well as the D ring security belt.

5 THE COURT: Thank you for asking.

6 THE SERGEANT: Just to make sure that Mr. Harrell  
7 understood what it was, I'm going to go back in and just  
8 confirm that he doesn't think it's only going to be for  
9 transportation out to here.

10 THE COURT: You know what? I -- my suggestion is  
11 that we not -- and it's your client, Mr. Herlich, if you  
12 disagree, please jump in -- my suggestion is we not  
13 highlight that, that we bring him out. He will realize soon  
14 enough when he sits the shackles are not being taken off.

15 THE SERGEANT: Okay.

16 THE COURT: If he has an issue at that point, he  
17 can ask to be removed.

18 Do you agree?

19 MR. HERLICH: That's fine.

20 THE COURT: I am concerned, given his personality,  
21 to highlight it or flag it might become an issue that was  
22 not an issue before.

23 THE SERGEANT: Certainly.

24 THE COURT: Okay, thank you.

25 And, of course, there's no disagreement as to just

1 rereading all of count three again, right?

2 MS. PARK: No.

3 MR. HERLICH: No, not at all.

4 (Court conferring with sergeant.)

5 THE COURT: Just in discussing with the sergeant a  
6 little bit further, what else we can possibly do to protect  
7 the rights of the defendant, the sergeant has indicated that  
8 when he enters the courtroom, he will stand kind of in front  
9 of the defendant to block the jury's view of his hands as  
10 they enter.

11 THE SERGEANT: More so behind you, Mr. Herlich.

12 MR. HERLICH: Okay.

13 THE SERGEANT: Rather than behind the defendant.  
14 So they're basically forced to go off at the  
15 angle.

16 THE COURT: And not be able to see his hands are  
17 in the D link --

18 MR. HERLICH: Okay.

19 THE COURT: -- belt.

20 MR. HERLICH: Okay.

21 THE COURT: Alright?

22 MR. HERLICH: Alright.

23 THE COURT: I'm just trying to do everything we  
24 can to make sure, you know, that he gets a fair trial.

25 MR. HERLICH: (Indicating.)

Joanne Fleming

1 Just one last thing. I keep looking at the  
2 redirect by Ms. Park. I will just note that I'll object --  
3 for what it's worth, your Honor, I will object to the  
4 material beginning at page 94 line 25 through page 95 line  
5 6.

6 THE COURT: In other words, what I just ruled on.

7 MR. HERLICH: Yes. I just wanted to note my  
8 objection.

9 THE COURT: I think it's clear from the jury note,  
10 and I will read the note again: Witness Cypress Smith's  
11 testimony to both prosecution and defense regarding the  
12 position of defendant's penis in relation to witness' vulva  
13 slash vagina, including witness' statements that the  
14 defendant quote moved to and that she quote asked him to  
15 stop because it would hurt and he responded that quote it  
16 would not hurt if you relaxed.

17 I think that last section where she asked him to  
18 stop because it would hurt and he responded that it would  
19 not hurt if you relaxed, this is clearly right in line with  
20 that, with that whole line of their concern. So I think  
21 it's part of that.

22 Good afternoon, Mr. Harrell.

23 (Whereupon, the defendant entered the courtroom.)

24 THE COURT: How are you today?

25 THE DEFENDANT: (Indicating.)

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1 THE COURT: I think you made a very wise choice  
2 coming out to join us. I'm glad you made that decision.

3 We received a jury note. Mr. Herlich, do you need  
4 a minute to explain to your client?

5 MR. HERLICH: Just to explain to him what is  
6 happening.

7 THE COURT: Sure.

8 Let the record reflect that I just handed the  
9 actual note so he can discuss it with Mr. Harrell.

10 A COURT OFFICER: (Hanging.)

11 (Counsel conferring with defendant.)

12 THE COURT: You ready to go forward now, Mr.  
13 Herlich?

14 MR. HERLICH: Yes, I am.

15 THE COURT: Okay.

16 You've brought your client up to speed what's  
17 going on with the note?

18 MR. HERLICH: Yes.

19 THE COURT: Okay.

20 Let's bring the jury in, please.

21 MS. PARK: Judge, before the --

22 THE COURT: Yes?

23 MS. PARK: Page 64 line eight, there was a  
24 typographical error. So maybe we can agree on that?

25 THE COURT: Do you agree?

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1 MR. HERLICH: It should be: Did anything else  
2 happen as opposed to "did thing else happen."

3 THE COURT: Okay.

4 MS. PARK: And also the word "our." It says "our  
5 vagina."

6 MR. HERLICH: Yes.

7 MS. PARK: It should be "your vagina."

8 THE COURT: Correct.

9 Let's give Joanne a minute or more to make sure  
10 that she's located everything she needs to read and then you  
11 can bring the jury.

12 Joanne, let me know when you're ready.

13 MR. HERLICH: My client wanted to know why I did  
14 not tell the jury in my summation that he wanted to testify  
15 but couldn't testify. And I said that's not how it works.

16 (Defendant conferring with counsel.)

17 MR. HERLICH: He wants to know why all parties had  
18 a discussion in the holding pen with whether the defendant  
19 wanted to come out.

20 THE DEFENDANT: In shackles.

21 MR. HERLICH: In shackles.

22 And I'm trying to explain to my client the court  
23 officers, who are responsible for security, made that  
24 determination based upon certain conduct of the defendant  
25 during the trial.

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1 And, as a courtesy, to be -- to bend over  
2 backwards to make sure you understood your options to be  
3 present for your trial, the Judge and the prosecutor and  
4 myself all came to inform you that you have a right to be  
5 present at your trial and to testify, but that if you will  
6 not agree to come in shackles that will be hidden from the  
7 jury, then you will forfeit your right to be present, as  
8 well as your right to testify on your own behalf. And  
9 that's why we came to the pen area to speak with you.

10 THE COURT: And, so, he's asking why you didn't  
11 say those things to the jury.

12 He would not be permitted to say those things to  
13 the jury. That's not permitted at a trial. If you want to  
14 communicate anything to a jury, you do so when you take the  
15 stand and you chose not to do that.

16 THE DEFENDANT: But not in no shackles.

17 THE COURT: Right, but we already had that  
18 discussion.

19 THE DEFENDANT: I mean, that wasn't fair. There  
20 was no reason for me to be in no shackles.

21 THE COURT: And we discussed this yesterday,  
22 right?

23 THE DEFENDANT: No. We actually -- just one  
24 sided. That was, like, one sided.

25 THE COURT: Well, that's not true, Mr. Harrell.

1 That's not true. There's at least six people who were there  
2 in the pens with me yesterday. They all heard what  
3 happened. It wasn't one sided.

4 I was trying to engage you in a conversation. I  
5 treated you with respect. I treated you like a man. I was  
6 trying to appeal to your sense of logic and common sense.  
7 You were the one who, if anything, was interrupting me and  
8 cutting me off.

9 And I did everything I could possibly do to bring  
10 you out here so you could testify in your behalf, and at the  
11 end of the day you said: No, if I'm in the shackles, I'm  
12 not going. That's what happened.

13 THE DEFENDANT: So why wouldn't they have to know  
14 that? I don't understand that.

15 THE COURT: Because it's not relevant. It's not  
16 relevant to the ultimate issue in this case. Why you  
17 wouldn't come out here in shackles and why you were not in  
18 the courtroom is not relevant to their findings of fact.

19 THE DEFENDANT: So they're not supposed to know  
20 I'm already incarcerated?

21 THE COURT: There is a lot of things they're not  
22 supposed to know, which we don't let them know in order to  
23 make sure you get a fair trial, yes.

24 THE DEFENDANT: Well, that would be fair for me  
25 seeing --

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1 THE COURT: Mr. Harrell, we made that clear to  
2 you. They wouldn't have seen you in shackles. We made that  
3 clear to you yesterday. Every precaution that could have  
4 been taken would have been taken, including putting you on  
5 the witness stand before the jury came out.

6 Okay, are we ready to bring the jury in, Mr.  
7 Harrell?

8 THE DEFENDANT: I don't have a choice, do I?

9 THE COURT: Well, I just want to make sure your --  
10 that you will continue to conduct yourself as a gentleman.

11 THE DEFENDANT: What did I do wrong the first  
12 time? I never did anything wrong.

13 THE COURT: Alright, let's bring the jury in,  
14 please.

15 A COURT OFFICER: Jury entering.

16 (Whereupon, the jury entered the courtroom.)

17 THE CLERK: Continuing case on trial, People  
18 versus Lonnie Harrell.

19 All parties and all jurors are present.

20 THE COURT: Good afternoon, jurors. Welcome back.

21 Jurors, we received your note. It was signed by  
22 your jury foreperson at twelve-fifteen, and it's been marked  
23 as Court Exhibit Number III and it reads as follows:

24 We, the jury, request one: Witness Cypress  
25 Smith's testimony to both prosecution and defense regarding

Joanne Fleming

1 the position of defendant's penis in relation to witness'  
2 vulva slash vagina, including witness' statements that the  
3 defendant quote moved to and that she quote asked him to  
4 stop because it would hurt and he responded that quote it  
5 would not hurt if you relaxed.

6 And, two: The Judge's instructions regarding  
7 charge number three.

8 Mr. Foreperson, did I read that note correctly?

9 THE FOREPERSON: Yes, you have, your Honor.

10 THE COURT: Okay.

11 We're prepared to give you that readback. It's  
12 pretty brief. We will read that back to you, and then after  
13 the court reporter reads that back to you, I will read to  
14 you again the charge for count three.

15 (Whereupon, the requested testimony was read  
16 back.)

17 THE COURT: Jurors, at this time I will read to  
18 you count three again.

19 The third count is an attempt to commit the crime  
20 of rape in the first degree. I will instruct you first on  
21 the definition of the crime of rape in the first degree,  
22 then I will define for you an attempt to commit a crime,  
23 finally, I will put both definitions together and list for  
24 you the elements of an attempt to commit the crime of rape  
25 in the first degree.

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1 Under our law, a person is guilty of rape in the  
2 first degree when he engages in sexual intercourse with  
3 another person by forcible compulsion.

4 Under our law, it is also an element of this  
5 offense that the sexual act committed was without consent.

6 Sexual intercourse takes place without a person's  
7 consent when the lack of consent results from forcible  
8 compulsion.

9 Some of the terms used in this definition have  
10 their own special meaning in our law. I will now give you  
11 the meaning of the following terms: Sexual intercourse and  
12 forcible compulsion.

13 Sexual intercourse means any penetration, however  
14 slight, of the penis into the vaginal opening; in other  
15 words, any penetration of the penis into the vaginal  
16 opening, regardless of the distance of penetration,  
17 constitutes an act of sexual intercourse. Sexual  
18 intercourse does not necessarily require erection of the  
19 penis, emission or orgasm.

20 Forcible compulsion means to intentionally compel,  
21 either by the use of physical force or by a threat,  
22 expressed or implied, which places a person in fear of  
23 immediate death or physical injury to herself or another  
24 person.

25 Under our law, a person is guilty of an attempt to

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1 commit a crime when, with intent to commit a crime, he  
2 engages in conduct which tends to effect the commission of  
3 such crime.

4 Some of the terms used in this definition of  
5 attempt have their own special meaning in our law. I will  
6 now give you the meaning of the following terms: Intent and  
7 tends to effect.

8 Intent means conscious objective or purpose.

9 Thus, a person acts with intent to commit a crime  
10 when his conscious objective or purpose is to commit that  
11 crime.

12 Conduct which tends to effect the commission of a  
13 crime means conduct which comes dangerously close or very  
14 near to the completion of the intended crime.

15 If a person intends to commit a crime and engages  
16 in conduct which carries his purpose forward within  
17 dangerous proximity to the completion of the intended crime,  
18 he is guilty of an attempt to commit that crime.

19 It does not matter that the intended crime was not  
20 actually completed. The person's conduct must be directed  
21 toward the accomplishment of the intended crime. It must go  
22 beyond planning and mere preparation, but it not need be the  
23 last act necessary to effect the actual commission of the  
24 intended crime. Rather, the conduct involved must go far  
25 enough that it comes dangerously close or very near to the

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1 completion of the intended crime.

2 In order for you to find the defendant guilty of  
3 an attempt to commit the crime of rape in the first degree,  
4 the People are required to prove, from all of the evidence  
5 in the case, beyond a reasonable doubt, each of the  
6 following three elements:

7 First: That on or about July 16th, 2014, in the  
8 County of New York, the defendant, Lonnie Harrell, intended  
9 to commit the crime of rape in the first degree;

10 Two: That the defendant engaged in conduct which  
11 tended to effect the commission of that crime;

12 And, three: That the defendant did so without  
13 Cypress Smith's consent by the use of forcible compulsion.

14 Therefore, if you find that the People have proven  
15 beyond a reasonable doubt all three of those elements, you  
16 must find the defendant guilty of the crime of an attempt to  
17 commit the crime of rape in the first degree under the third  
18 count.

19 On the other hand, if you find that the People  
20 have not proven beyond a reasonable doubt any one or more of  
21 those three elements, you must find the defendant not guilty  
22 of the crime of an attempt to commit the crime of rape in  
23 the first degree under the third count.

24 Mr. Foreperson, was that responsive to your  
25 question?

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1 THE FOREPERSON: Yes, it was, your Honor.

2 THE COURT: Okay.

3 It's about ten after one right now. I will allow  
4 you to continue your deliberations until about one-thirty.  
5 At one-thirty, I will ask you to please stop, take your  
6 lunch recess and come back at two-forty-five.

7 When you come back at two-forty-five, please again  
8 remember, that unless all of the jurors are gathered  
9 together, you cannot continue your deliberations.

10 I remind you also of all my other instructions  
11 when you're not together: To not discuss this case among  
12 yourselves or with anyone else.

13 And refrain from reaching a final opinion or  
14 conclusion until you've deliberated with the entire jury.

15 Thank you. You can continue your deliberations  
16 now.

17 A COURT OFFICER: Make sure you have all your  
18 belongings and step this way, please.

19 (Whereupon, the jury exited the courtroom.)

20 THE COURT: Okay, so at one-thirty we will go down  
21 for lunch.

22 THE DEFENDANT: Can I ask you a question?

23 Why did you allow me to come out here now on  
24 redirect or you did not allow me to come out before? I  
25 don't understand that. I still don't understand. I mean ---

Joanne Fleming

1 THE COURT: Can I answer you? Can I answer you?

2 THE DEFENDANT: Yes.

3 THE COURT: You were allowed to come out before.

4 You chose not to.

5 THE DEFENDANT: But like this?

6 THE COURT: You chose not to.

7 Today we asked you again: Do you want to come  
8 out. You said yes. We brought you out.

9 THE DEFENDANT: You said it yourself, it wasn't me  
10 that got angry, it was you. You said it yourself.

11 THE COURT: I said that?

12 THE DEFENDANT: Yes, back there.

13 THE COURT: Alright, we'll excuse you now, Mr.  
14 Harrell.

15 THE DEFENDANT: So you don't want to answer now,  
16 right?

17 I've been good. I've stayed under the table.  
18 Answer my questions.

19 THE COURT: I've answered your question. It  
20 serves no purpose.

21 (Whereupon, the defendant exited the courtroom.)

22 THE DEFENDANT: This is funny? This is a joke,  
23 man? Word up. This is a joke?

24 THE COURT: Let the record reflect, by the way,  
25 that from the minute Mr. Harrell was brought out, I had very

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1 real concerns about what was going to happen. He was  
2 looking over both shoulders. He kept looking the sergeant  
3 up and down. He was actually not answering when I spoke to  
4 him. He would nod or not respond at all. Although he was  
5 quiet, he definitely appeared to be in a very heightened,  
6 very agitated state. I did not like the way he was sizing  
7 up the court officers.

8 And as he was escorted out of the courtroom just  
9 now, I believe the court reporter got what he was saying,  
10 literally over his shoulder as he was walking out the door.

11 It appears to me that the decisions that were made  
12 by the lieutenant and the sergeant to keep him shackled was  
13 the right decision.

14 (Whereupon, jury deliberations took place.)

15 (Luncheon recess held.)

16 \* \* \* A F T E R N O O N S E S S I O N \* \* \*

17 THE CLERK: Recalling case on trial, People versus  
18 Lonnie Harrell.

19 THE COURT: Okay, good afternoon.

20 Even though it's only ten after four, I wanted to  
21 recall the case because it's been brought to my attention by  
22 the court officers that they've been informed by Corrections  
23 that your client wants to leave, he has no interest in  
24 coming back out. And he's expressing that he wants to  
25 leave. So, I just wanted to give you an opportunity to be

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1 heard before I excused him.

2 Do you have any objection to him being permitted  
3 to leave?

4 MR. HERLICH: No, Judge. I think he missed his  
5 bus until maybe much later today. So it's almost a moot  
6 point. But whatever... No.

7 THE COURT: Okay.

8 There was also one thing that the sergeant just  
9 brought to my attention and I would like the sergeant to put  
10 it on the record.

11 THE SERGEANT: Upon the defendant leaving the  
12 courtroom, he made a statement, loud enough for all the  
13 security staff to hear, basically in sum and substance: I  
14 should have just stood up, indicating to me that he was  
15 going to make an attempt to show the jury that he was in  
16 fact shackled and handcuffed.

17 THE COURT: Okay. Thank you, sergeant.

18 And if you can please communicate to Corrections,  
19 to the extent that he can leave, he's permitted to leave  
20 now.

21 MS. PARK: Judge, what happens if we do get a  
22 verdict by the end of the day?

23 THE COURT: He has stated that he doesn't want to  
24 come out.

25 MS. PARK: Does he know that the case will just

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1 move forward and even if we get a verdict?

2 THE COURT: Well, he's been Parkerized a number of  
3 times.

4 MS. PARK: Yes.

5 THE COURT: And in light of what the sergeant has  
6 just stated, the last thing I want is a disruption with the  
7 jury present.

8 So, he has asked to go home. He knows the jury is  
9 deliberating. He knows the jury's deliberating hopefully to  
10 reach a verdict, but he's asking to be excused from these  
11 proceedings.

12 We will ask to produce him tomorrow, please.

13 THE SERGEANT: Certainly.

14 THE COURT: And I guess we will just sit tight for  
15 a few minutes and see if the jury's able to reach a verdict  
16 or not.

17 THE CLERK: (Hanging.)

18 THE SERGEANT: Counsel.

19 THE COURT: Alright, I'll take that.

20 A COURT OFFICER: (Hanging.)

21 THE COURT: Did you mark it, Brian?

22 THE CLERK: Yes, four.

23 THE COURT: Alright, we've just received a note,  
24 it was signed by the foreperson at four-o-seven. It's been  
25 marked as Court Exhibit Number IV. It's also been given to

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1 both attorneys to read.

2 It says: We, the jury, request guidance. We have  
3 a unanimous decision on six of seven counts. Please advise  
4 us on how to proceed when we are deadlock, in quotes, on one  
5 of the seven counts, meaning we don't have a unanimous  
6 decision on one count.

7 You have both had a chance to read that?

8 MR. HERLICH: Yes, your Honor.

9 MS. PARK: Yes.

10 THE COURT: I'll hear you.

11 MR. HERLICH: We can either take the verdict on  
12 the -- first, I never want to guess what a jury is thinking,  
13 but if I had to, I would say on the attempt rape one, they  
14 may be deadlocked in some way, shape or form.

15 We can either take a verdict on six of the seven  
16 counts and declare a mistrial on that one count, or you  
17 could admonish them to continue to deliberate. It's --

18 THE COURT: And if I were to admonish them to  
19 deliberate, do you have any suggestion as to what that  
20 admonishment should be?

21 MR. HERLICH: I mean, I guess --

22 THE COURT: In other words, are you asking for an  
23 Allen charge? Are you requesting --

24 Short of an Allen charge, what are you requesting?

25 MR. HERLICH: They've deliberated, I suppose,

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1 about approximately a half hour yesterday, which wasn't  
2 much, and today they have had a full day. So perhaps a  
3 little pep talk, short of a full Allen charge.

4 THE COURT: People, what is your position?

5 MS. PARK: I mean, perhaps we can take a partial  
6 verdict.

7 THE COURT: Take a partial verdict and give  
8 them --

9 MS. PARK: And then give them the Allen charge.

10 THE COURT: Okay.

11 You know, there is different levels of Allen  
12 charges. There is the first one and then they become  
13 progressively more on course. Would you oppose to them  
14 receiving the first Allen charge?

15 MR. HERLICH: No, I don't oppose that, although my  
16 position would be that we not take a partial verdict at this  
17 point unless that was going to end the deliberation with a  
18 mistrial on the deadlocked count. If they're going to  
19 continue to deliberate, I would -- my position would be to  
20 wait until further notice of a unanimous verdict on all  
21 counts before taking the verdict.

22 THE COURT: How do you feel about that?

23 MS. PARK: I mean, I don't see why we can't take a  
24 partial verdict and then give the Allen charge as to the  
25 remaining count.

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1 THE COURT: Okay.

2 I'm going to give them kind of a toned down Allen  
3 charge, and at this point I'm inclined to take a partial  
4 verdict, a bird in the hand, and they have reached verdicts  
5 on six out of seven.

6 MS. PARK: Yes. It seems the note was very clear  
7 that they reached a unanimous verdict.

8 THE COURT: And the section of law that governs is  
9 CPL section 310.70, subdivision one: If a deliberating jury  
10 declares that it has reached a verdict with respect to one  
11 or more but not all of the offenses submitted to it, or with  
12 respect to one or more but not all of the defendants, the  
13 court must proceed as follows:

14 B: If the court is satisfied that there is a  
15 reasonable possibility of ultimate agreement upon any of the  
16 unresolved offenses with respect to any defendant, it may  
17 either:

18 One, order the jury to renders its verdict with  
19 respect to those offenses and defendants upon which or with  
20 respect to whom it has reached agreement and resume its  
21 deliberations upon the remainder; or:

22 Two, refuse to accept the partial verdict at the  
23 time and order to the jury to resume its deliberations upon  
24 the entire case.

25 I believe, as governed under subsection B, that

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1 there is a reasonable possibility of ultimate agreement upon  
2 the unresolved offenses, and therefore, I'm going to proceed  
3 as per 310.70, subdivision (1)(b), and I will take the  
4 partial verdict.

5 And after that, I will give them the Allen charge  
6 and I will excuse them. I find that excusing the jury after  
7 giving an Allen charge is often a good way to end the day  
8 and starts them fresh the next day.

9 So, let's bring them in and we will take the  
10 verdict.

11 THE CLERK: Are you going to ask them which count  
12 or are you going to go through the full thing?

13 THE COURT: I'll ask them.

14 MR. HERLICH: Just so I'm clear, your Honor, will  
15 you go down the verdict sheet and by that method find out  
16 which is the count upon which they're deadlocked? How do  
17 you --

18 THE COURT: I am -- you know, we run the risk that  
19 somebody's going to say something inappropriate if we do  
20 that. I will ask them which count have you not reached a  
21 verdict.

22 MR. HERLICH: Okay, fine.

23 A COURT OFFICER: Ready?

24 THE COURT: Yes.

25 A COURT OFFICER: Jury entering.

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1 (Whereupon, the jury entered the courtroom.)

2 THE CLERK: Continuing case on trial, People  
3 versus Lonnie Harrell.

4 All parties, except for the defendant, and jurors  
5 are present.

6 THE COURT: Good afternoon, jurors.

7 Jurors, I received your note. It's been marked as  
8 Court Exhibit Number IV and it was signed by your jury  
9 foreperson at four-o-seven.

10 The note reads: We, the jury, request guidance.  
11 We have a unanimous decision on six of seven counts. Please  
12 advise us on how to proceed. We are deadlocked, quote, on  
13 one of the seven counts, meaning we don't have a unanimous  
14 decision on one count.

15 Mr. Foreperson, did I read that note correctly?

16 THE DEFENDANT: Yes, you did.

17 THE COURT: And without telling me the verdict,  
18 has the jury in fact reached a unanimous verdict as to six  
19 of the seven counts?

20 THE FOREPERSON: We have, your Honor.

21 THE COURT: Okay.

22 Which count has the jury not reached a verdict on?

23 THE FOREPERSON: Count number three, an attempt to  
24 commit the crime of rape in the first degree.

25 THE COURT: Okay.

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1           What we're going to do, I'm going to respond to  
2           this note in a couple of different sections. The first  
3           thing we're going to do, we're going to take what's called a  
4           partial verdict. So we will take that partial verdict right  
5           now.

6           THE CLERK: Will the foreperson please rise?

7           (Foreperson complies.)

8           THE CLERK: As to the People of the State of New  
9           York versus Lonnie Harrell, how do you find the defendant,  
10          count one, criminal sexual act in the first degree, guilty  
11          or not guilty?

12          THE FOREPERSON: Guilty.

13          THE CLERK: As to count two, charging the  
14          defendant with criminal sexual act in the first degree, how  
15          do you find the defendant, guilty or not guilty?

16          THE FOREPERSON: Guilty.

17          THE CLERK: As to count four, charging sexual  
18          abuse in the first degree, how do you find the defendant,  
19          guilty or not guilty?

20          THE FOREPERSON: Guilty.

21          THE CLERK: As to count five, sexual abuse in the  
22          first degree, how do you find the defendant, guilty or not  
23          guilty?

24          THE FOREPERSON: Guilty.

25          THE CLERK: As to count six, charging criminal

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1 sexual act in the third degree, how do you find the  
2 defendant, guilty or not guilty?

3 THE FOREPERSON: Guilty.

4 THE CLERK: As to count seven, charging criminal  
5 sexual act in the third degree, how do you find the  
6 defendant, guilty or not guilty?

7 THE FOREPERSON: Guilty.

8 THE CLERK: Thank you.

9 Please be seated.

10 (Foreperson complies.)

11 THE CLERK: Members of the Jury, hear your verdict  
12 as it stands recorded, you said you find the defendant  
13 guilty as to count one, criminal sexual act in the first  
14 degree; guilty as to count two, criminal sexual act in the  
15 first degree; guilty as to count four, sexual abuse in the  
16 first degree; guilty as to count five, sexual abuse in the  
17 first degree; guilty as to count six, criminal sexual act in  
18 the third degree; and guilty as to count seven, criminal  
19 sexual act in the third degree.

20 Is that your verdict, so say you all?

21 VOICES FROM JURY BOX: Yes.

22 THE COURT: Would you like the jury polled?

23 MR. HERLICH: Yes.

24 THE CLERK: Juror Number 1, is that your verdict?

25 JUROR NUMBER 1: Yes.

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1 THE CLERK: Juror Number 2, is that your verdict?

2 JUROR NUMBER 2: Yes.

3 THE CLERK: Juror Number 3, is that your verdict?

4 JUROR NUMBER 3: Yes.

5 THE CLERK: Juror Number 4, is that your verdict?

6 JUROR NUMBER 4: Yes.

7 THE CLERK: Juror Number 5, is that your verdict?

8 JUROR NUMBER 5: Yes.

9 THE CLERK: Juror Number 6, is that your verdict?

10 JUROR NUMBER 6: No.

11 THE COURT: That's not your verdict, ma'am?

12 JUROR NUMBER 6: What?

13 THE COURT: That's not your verdict?

14 JUROR NUMBER 6: No, no.

15 THE COURT: As to counts one, two, four, five, six  
16 and seven, is that your verdict?

17 JUROR NUMBER 6: Yes.

18 THE COURT: Okay.

19 THE CLERK: Juror Number 7, is that your verdict?

20 JUROR NUMBER 7: Yes.

21 THE CLERK: Juror Number 8, is that your verdict?

22 JUROR NUMBER 8: Yes.

23 THE CLERK: Juror Number 9, is that your verdict?

24 JUROR NUMBER 9: Yes.

25 THE CLERK: Juror Number 10, is that your verdict?

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1 JUROR NUMBER 10: Yes.

2 THE CLERK: Juror Number 11, is that your verdict?

3 JUROR NUMBER 11: Yes.

4 THE CLERK: Juror Number 12, is that your verdict?

5 JUROR NUMBER 12: Yes.

6 THE COURT: Okay, thank you.

7 So, you asked for guidance. So I will attempt to  
8 give you some guidance now.

9 Members of the Jury, from my experience, you have  
10 not been considering this case long enough to conclude that  
11 you are deadlocked as to any particular count. When you  
12 consider the time of day you started your deliberations,  
13 yesterday at about roughly four o'clock, and today you  
14 started at about ten o'clock, we then broke for lunch for  
15 about an hour and fifteen minutes, and you stopped at about  
16 four o'clock, when you add it all up, you've only been  
17 deliberating for five hours, or just a little bit more than  
18 that.

19 It is not uncommon for a jury to have difficulty  
20 in reaching a unanimous verdict. And it is not uniform for  
21 a jury to believe that they will not be able to reach a  
22 unanimous verdict. But after some further deliberations,  
23 most juries are able to reach a unanimous verdict.

24 At this time it may be helpful if I explain the  
25 process of deliberations. Now that you have been

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1 deliberating, the instructions may have more meaning to you.

2 You remember I said: To reach a verdict, you must  
3 deliberate with the other jurors. That means you should  
4 discuss the evidence and consult with each other, listen to  
5 each other, give each other's views careful consideration  
6 and reason together when considering the evidence.

7 You should, as I explained, make every effort to  
8 harmonize the various views expressed by the different  
9 jurors and make every effort to come to a unanimous  
10 agreement based on the law and the facts of this case.

11 In making that effort, you should be guided by  
12 reason, common sense and logic. Each juror should have a  
13 fair chance to express his or her views and to hear the  
14 views of their fellow jurors.

15 Everyone understands that in fulfilling this  
16 responsibility, that discussions and arguments can be  
17 difficult. But the deliberations should be based on a  
18 reasoned discussion among reasonable people who understand  
19 and respect each other's desire to fulfill his or her  
20 responsibilities under the law.

21 Harsh language, a demeaning or derogatory  
22 approach, will not, in the end, be helpful or fair. Each  
23 juror should participate in the discussions.

24 Remember I told you, before finalizing your  
25 opinions and conclusions, you should listen to the views of

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1 your fellow jurors and you should be willing to discuss  
2 their views and your views.

3 You should be open to reason and be willing either  
4 to adhere to your opinion and conclusions if persuaded that  
5 you are correct or to change an opinion or conclusion if  
6 persuaded that you are not correct.

7 You should not retain a view for the sole reason  
8 that you once expressed that view and then close your mind  
9 to hearing what your fellow jurors have to say. Nor should  
10 you be guilty of pride and stubbornly stick to an opinion or  
11 conclusion that you no longer believe is correct.

12 At the same time, no juror should surrender his or  
13 her honest view about the evidence solely because the juror  
14 wants the trial to end or because the jury is outvoted.

15 By your oath and your promise to me, you agreed  
16 that you would evaluate the evidence fairly, without fear,  
17 favor, sympathy, bias or prejudice, and that you would apply  
18 the law to the facts you find to have been proven regardless  
19 of whether or not you agree with the law.

20 Please consider whether a readback of some or all  
21 of the testimony will be helpful or whether hearing the law  
22 on a particular subject would be helpful.

23 Again, as I said before, in the interests of  
24 justice, please make whatever effort, consistent with your  
25 conscious and the evidence in this case, to harmonize your

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1 views and decisions in this case with those of your fellow  
2 jurors. To the best of your ability, I ask you to apply  
3 common sense and good judgment.

4 In short, I appreciate that deliberations can be  
5 difficult. They were not intended to be easy. So, in  
6 accord with your oath and promise to me, I'm going to direct  
7 you to continue your deliberations.

8 Of course, I'm remindful it's now four-thirty. In  
9 my experience, this is a good time to break, and so, we're  
10 going to take our recess now. I will ask you to come back  
11 tomorrow at nine-thirty.

12 And I encourage you to please remember the  
13 instructions I've just given to you. I think you will find  
14 it helpful.

15 Before I release you, I remind you of the  
16 admonitions I've previously given to you:

17 Do not talk either amongst yourselves or with  
18 anyone else about anything related to the case.

19 Do not at any time request, accept, agree to  
20 accept or discuss with any person, the receipt or acceptance  
21 of any payment or benefit in return for supplying any  
22 information concerning the trial.

23 You must promptly report directly to me any  
24 incident within your knowledge involving any attempt by  
25 anyone to improperly influence you or any member of the

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1 jury.

2 Do not visit or view any of the locations  
3 discussed in the case.

4 And do not use the Internet or Google Maps or  
5 anything of that nature to look at any of the locations  
6 discussed in the testimony.

7 Do not read, view or listen to any accounts or  
8 discussions of the case reported by newspapers, television,  
9 radio, the Internet or any other news media.

10 Do not attempt to research any fact, issue or law  
11 related to this case, whether by discussion with others or  
12 research in a library or on the Internet or by any other  
13 means or source.

14 I want to emphasize that in addition to not  
15 talking face to face with anyone about the case, you must  
16 not communicate with anyone about the case by any other  
17 means including telephone, text message, e-mails, chats and  
18 the like.

19 And you must not provide any information about the  
20 case to anyone by any means whatsoever, and that includes  
21 the posting of information about the case or what you're  
22 doing on the case on any device or Internet site, including  
23 blogs and chatrooms.

24 You must also not Google or otherwise search for  
25 any information about the case or the law which applies to

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1 the case or the people involved in the case including the  
2 defendant, the witnesses, the lawyers and myself.

3 You can leave your writing instruments there with  
4 you and I will see you tomorrow at nine-thirty.

5 Thank you.

6 A COURT OFFICER: Make sure you have all your  
7 belongings and come this way, please.

8 (Whereupon, the jury exited the courtroom.)

9 THE COURT: Ms. Park, what I would ask you to do  
10 between now and tomorrow is discuss with your supervisors if  
11 the jury in fact is deadlocked -- and I'm not prepared to  
12 make that finding any time soon -- but if the jury is in  
13 fact deadlocked, whether you intend to retry the case as to  
14 that one charge or you would move to dismiss that charge.  
15 But I would ask you to please begin to look into that so we  
16 will know.

17 Again, I'm not prepared to declare a mistrial any  
18 time soon. This is a serious case. There were numerous  
19 charges and really they've only been deliberating for a  
20 little over five hours, okay?

21 Thank you.

22 (Whereupon, the trial was adjourned to Wednesday,  
23 October 7th, 2015.)  
24  
25

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1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 59  
3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK

Indictment  
No. 4258/14

5 -against-

Crim. Sex Act 1

Jury Trial

6 LONNIE HARRELL,

7 Defendant.

8 -----x

9 October 7th, 2015

10 100 Centre Street  
11 New York, NY 10013

12 B e f o r e :

13 HONORABLE JUAN M. MERCHAN,

14 Justice.  
15

16 A p p e a r a n c e s :

17 CYRUS R. VANCE, JR., ESQ.  
18 District Attorney, New York County  
19 BY: JUNG PARK, ESQ.  
Assistant District Attorney

20 THEODORE HERLICH, ESQ.  
21 Attorney for Defendant  
22  
23  
24

25 Joanne Fleming  
Senior Court Reporter

10/4-15

1 (In open court)

2 THE CLERK: Continuing case on trial.

3 (Whereupon, jury deliberations took place.)

4 THE CLERK: Continuing case on trial, People  
5 versus Lonnie Harrell.

6 THE COURT: Okay, good morning.

7 MR. HERLICH: Good morning.

8 THE COURT: Before we get to the note, I just  
9 wanted to go on the record that this morning when I first  
10 entered the courtroom, I was informed by one of the court  
11 officers that he had been informed by Corrections that  
12 defendant Harrell had been produced, that he was in an  
13 agitated state, that he didn't want to be here, he wanted to  
14 leave, he was not interested in hearing the verdict, he was  
15 not interested in participating in any of that.

16 Is that a fair representation?

17 A COURT OFFICER: It is, Judge.

18 THE COURT: Okay.

19 And based upon that, I then had an off-the-record  
20 conversation with Mr. Herlich, who was in the courtroom at  
21 the time, and I asked Mr. Herlich if he would have any  
22 objection to the defendant being sent back, and Mr. Herlich  
23 stated, in substance, that based upon the representations  
24 that had been conveyed, he did not have an objection.

25 Is that fair, Mr. Herlich?

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## Jury Deliberations

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1 MR. HERLICH: Yes, your Honor, that's correct.

2 THE COURT: Okay.

3 Now, we received a note, it has been marked as  
4 Court Exhibit Number V, and it was signed by the jury  
5 foreperson at ten-forty-six.

6 Have you both had a chance to read this note?

7 MR. HERLICH: Yes.

8 MS. PARK: Yes.

9 THE COURT: I will read it into the record and we  
10 will take it one by one.

11 We, the jury, request clarification, one: Does  
12 the testimony of an expert witness or general witness  
13 constitute evidence? Please clarify the difference between  
14 their testimonies.

15 Two: Do we consider all the evidence for charge  
16 number three or is there specific evidence for this charge?  
17 Can one piece of evidence apply to multiple charges?

18 Three: Reread the charge number three and law  
19 applicable.

20 Four: Does the first degree charge require more  
21 evidence than other charges?

22 Can I have the verdict sheet, by the way, a copy  
23 of it?

24 THE CLERK: They got it, but yes. (Handing.)

25 THE COURT: And five: Is there a crime of

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1 attempted rape in the second or third degrees and what is  
2 the difference?

3 So, pretty comprehensive note and I think I  
4 definitely want to get your input before I respond.

5 Let's take the first one. Does the testimony of  
6 an expert witness or general witness constitute evidence?  
7 Please clarify the difference between their testimonies.

8 Any thoughts on how I should answer that?

9 MR. HERLICH: Your Honor, obviously testimony of  
10 witnesses constitutes evidence just like physical exhibits  
11 and stipulations as you indicated. You can recharge that.

12 And, obviously, I think you want to recharge  
13 simply that an expert witness is permitted to give an  
14 opinion based on their expertise and the jury's role to  
15 either -- they can either accept that opinion testimony or  
16 reject it, but that's the significant difference between an  
17 expert witness and a lay witness, if you will.

18 MS. PARK: Judge, I would agree. I think you  
19 should just maybe re-read the expert witness charge and what  
20 Mr. Herlich said earlier.

21 THE COURT: So I was thinking of rereading the  
22 expert witness charge, but I was also thinking of rereading  
23 the charge on page four which is evidence, what is evidence.

24 MR. HERLICH: That's fine.

25 THE COURT: Do you agree?

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1 MS. PARK: Yes.

2 THE COURT: Now, number two: Do we consider all  
3 evidence for charge number three or is there specific  
4 evidence for this charge? Can one piece of evidence apply  
5 to multiple charges?

6 MS. PARK: And I think the answer is yes.

7 THE COURT: I see that you're mulling it over, Mr.  
8 Herlich. How about a response that says -- I think that  
9 they're a little bit -- when I read this note in its  
10 entirety, I get the sense that they're a little bit confused  
11 between evidence and credible evidence; in other words, they  
12 may be under the impression that anything that came out of  
13 the mouth of any witness and anything that was introduced as  
14 evidence must be accepted as true.

15 And I want to make sure that maybe I'm reading too  
16 much, I don't want to perpetuate that misunderstanding, so I  
17 want to respond yes, they can consider all evidence that  
18 they find to be credible and relevant for charge number  
19 three. I want to add the words "credible" and "relevant"  
20 and not just leave it at evidence. But if you don't want me  
21 to do that, I won't.

22 MR. HERLICH: Judge, can you say number two point  
23 one more time so I can hear it?

24 THE COURT: Do we consider all evidence for charge  
25 number three or is there specific evidence for this charge.

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1 Can one piece of evidence apply to multiple charges?

2 So, for example, yes, one piece of evidence may  
3 apply to multiple charges provided you find that evidence  
4 credible and relevant.

5 MR. HERLICH: I have no objection to that.

6 THE COURT: Okay.

7 MR. HERLICH: I know the next request is to  
8 recharge on count three which will state the elements of the  
9 crime. Perhaps as a lead-in to the charge on count three,  
10 you might consider saying, your Honor, that, you know,  
11 obviously the jury is the finder of fact and they have to  
12 determine, like you said, the credible evidence and then  
13 determine whether the evidence establishes beyond a  
14 reasonable doubt each and every element of the given crime.

15 THE COURT: I think that's really -- that's  
16 already included in there.

17 MR. HERLICH: That will be in count three?

18 THE COURT: Yes, in count three.

19 I think that's already included. If you look at  
20 the last two paragraphs of count three, I closed every  
21 charge with language to that effect.

22 MR. HERLICH: Right.

23 THE COURT: You agree?

24 MR. HERLICH: Okay.

25 THE COURT: Okay.

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1 Now we get to number four: Does first degree --  
2 does first degree charge require more evidence than other  
3 charges?

4 MR. HERLICH: It has different elements, your  
5 Honor. Either I would not respond to that question as not  
6 relevant, or simply say that the first -- the recharge has  
7 the elements that I just defined for you in count number  
8 three. It doesn't require -- it's just different elements  
9 than something else.

10 MS. PARK: I mean, maybe number four and five has  
11 to be addressed together because, I mean, here, he's not  
12 charged with second or third degree, so it's not for their  
13 consideration, what the elements of rape two or rape three  
14 are.

15 THE COURT: Well, yes, I agree with number five.  
16 The response to number five is the charge in this case is  
17 attempted first degree rape, not second or third, therefore,  
18 you are not to speculate as to what those charges may be,  
19 they are not being offered to you for your consideration,  
20 you are to put them out of your mind. No one here asked for  
21 lesser included. It's not something for them to consider.

22 Mr. Herlich?

23 MR. HERLICH: Attempted rape three -- I think  
24 attempted rape two has no application to this case  
25 whatsoever.

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1 THE COURT: Right.

2 MR. HERLICH: Attempted rape three is not a lesser  
3 included. It could have been charged based on the age of  
4 the complainant and the age of the defendant, but  
5 nevertheless, because of those elements which don't exist as  
6 to rape one, it's not a lesser included, so...

7 THE COURT: So the response to number five anyway  
8 is to say the defendant was not charged with any other  
9 degree, you are not to consider or speculate about that, you  
10 have not been instructed on the law on that.

11 MR. HERLICH: Okay.

12 MS. PARK: And, your Honor, just going back to  
13 question number four.

14 THE COURT: Yes?

15 MS. PARK: I mean, they're asking whether they  
16 need more evidence for first degree rape.

17 THE COURT: Right.

18 MS. PARK: And I think the answer has to be no,  
19 that they just have to -- did the People satisfy the  
20 elements as you instructed them beyond a reasonable doubt.  
21 I think --

22 THE COURT: Does the first degree charge require  
23 more evidence than other charges. I think -- I think that  
24 the way to answer is that's not really relevant in this  
25 case. What's relevant is that the first degree charge

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1 requires that the People prove certain elements beyond a  
2 reasonable doubt and those elements are as I have given them  
3 to you. It's not a matter of whether they have to prove  
4 more evidence or less evidence. They have to prove the  
5 elements of the offense and the legal standard is by beyond  
6 a reasonable doubt.

7 Are you okay with that?

8 MR. HERLICH: I am.

9 MS. PARK: Yes, yes.

10 THE COURT: Okay. Let's see if I can remember to  
11 say that.

12 MR. HERLICH: We'll let you know.

13 THE COURT: I'm sure you will.

14 I'm glad to see that they're deliberating.

15 MR. HERLICH: Judge, it may be they're wrestling  
16 with whether the explicit forcible compulsion that they've  
17 already found was utilized in the commission of other  
18 offenses was utilized at the time of the alleged attempted  
19 rape.

20 THE COURT: Are they getting the jurors?

21 THE CLERK: Yes, they're getting them.

22 THE COURT: While we wait, so we agreed in  
23 response to the first question, I'm going to read the charge  
24 on evidence and the charge on expert witness.

25 Do you think we should read the charge on

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1 evidentiary inferences?

2 MS. PARK: I don't think so.

3 THE COURT: Okay.

4 It's probably your page five. I realize that not  
5 all of the pages are numbered.

6 THE SERGEANT: Sorry for the delay, there was a  
7 little screw-up on the communication.

8 THE COURT: No problem. 7

9 MR. HERLICH: I wouldn't request it, your Honor.

10 THE COURT: Alright, that's fine.

11 MR. HERLICH: I mean, while we have a minute, for  
12 what it's worth, Judge, attempt rape three, while it is not  
13 a lesser included offense, I suppose it could have been  
14 requested under People v. Ford, which is a Court of Appeals  
15 case, which permits a court in its discretion to charge an  
16 offense that's made out by the evidence at trial though not  
17 technically a lesser included offense of the counts  
18 contained in the indictment. However, I don't think that  
19 that charge can come into being at this point --

20 THE COURT: Right.

21 MR. HERLICH: -- in the case, so...

22 THE COURT: Yes.

23 MR. HERLICH: Right.

24 But it is a thoughtful question by the jury that  
25 they even --

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1 THE COURT: Yes.

2 A COURT OFFICER: Jury entering.

3 All rise.

4 THE COURT: All rise, please.

5 (Whereupon, the jury entered the courtroom.)

6 THE CLERK: Continuing case on trial, People  
7 versus Lonnie Harrell.

8 All parties, except for the defendant, and all  
9 jurors are present.

10 THE COURT: Good morning, jurors. Welcome back.

11 VOICES FROM JURY BOX: Good morning.

12 THE COURT: Jurors, we received your note. It was  
13 signed by your jury foreperson at ten-forty-six and it's  
14 been mark as Court Exhibit Number V, and it reads as  
15 follows:

16 We, the jury, request clarification, one: Does  
17 the testimony of an expert witness or a general witness  
18 constitute evidence? Please clarify the difference between  
19 their testimonies.

20 Two: Do we consider all evidence for charge  
21 number three or is there specific evidence for this charge?  
22 Can one piece of evidence apply to multiple charges?

23 Three: Reread the charge number three and the law  
24 that's applicable.

25 Four: Does the first degree charge require more

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1 evidence than other charges?

2 And, five: Is there a crime of attempted rape in  
3 the second and third degrees and what is the difference?

4 Mr. Foreperson, did I read that correctly?

5 THE FOREPERSON: Yes, your Honor.

6 THE COURT: Okay, we will try to answer these one  
7 at a time.

8 So for the first one, does the testimony of an  
9 expert witness or a general witness constitute evidence?  
10 Please clarify the difference between their testimonies.

11 The way I'm going to respond to that is, I'm going  
12 to reread to you my charge on evidence in general and then I  
13 will reread to you the charge on expert witnesses, okay?

14 So, evidence. When you judge the facts, you are  
15 to consider only the evidence. The evidence in the case  
16 includes the testimony of the witnesses, the exhibits that  
17 were received in evidence and the stipulation by the  
18 parties.

19 Testimony which was stricken from the record or to  
20 which an objection was sustained must be disregarded by you.

21 Exhibits that were received in evidence are  
22 available upon your request for your inspection and  
23 consideration.

24 Exhibits that were just seen during the trial or  
25 marked for identification but not received in evidence are

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